

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 690**  
**Case No. 89-20C**  
**(PUD & Map @ 22nd & N Streets, N.W.)**  
**May 13, 1991**

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on April 23 and 26, 1990. At those hearing sessions, the Zoning Commission considered the application of Citistate/IBG No. One General Partnership. The application requested consolidated review and approval of a Planned Unit Development (PUD) and related amendment to the Zoning Map of the District of Columbia, pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

**FINDINGS OF FACT**

1. The original application, which was filed on July 5, 1989, requested consolidated review and approval of a PUD and related change of zoning from R-5-B to R-5-D and CR for lots 4, 18-21, 24-27, 36, 42, 806, 812 and 813 in Square 49 located on the north side of N Street between 22nd and 23rd Streets, N.W.
2. The original application was for the construction of a mixed-use residential/office/retail building with a height of 107.75 feet, a maximum floor area ratio (FAR) of 7.56, and 227 apartment units. A maximum of 23,758 square feet was devoted to accommodate limited office and retail uses.
3. On August 28, 1989, the applicant revised the application and requested consolidated review and approval of a PUD and related change of zoning from R-5-B to CR for lots 4, 18-21, 24-27, 34, 42, 812 and 813 in Square 49.
4. The revised application proposed the construction of a mixed use residential/office/retail building with a maximum height of ninety (90) feet, a maximum FAR of 7.97, 208 apartment unit and underground parking to accommodate 225 cars.
5. The PUD site is zoned R-5-B, measures 29,929 square feet of land area, and is improved with some older residential buildings in need of repair including an apartment house on lot 4 and townhouses on lots 18-21, 24-26, 812, and 813. Lots 27 and 42 are vacant and unimproved.

**ZONING COMMISSION ORDER NO. 690**  
**CASE NO. 89-20C**  
**MAY 13, 1991**  
**PAGE No. 2**

6. The PUD site is in the square bounded by 22nd and 23rd, N and O Streets, N.W., and is located on the far western border of the Dupont Circle area, at the northern boundary of the West End neighborhood, and just west of the Dupont Circle Historic District.
7. The surrounding area is characterized by a mix of residential, commercial and recreational land uses. Squares to the south and west of the subject site are zoned CR and are occupied by eight-story office buildings and hotels. On the southeast corner of 22nd and N Streets is a Pepco sub-station followed by a nine-story office building that is under construction. Across N Street to the south of the site is the 90-foot Embassy Suites Hotel. On the southwest corner of 23rd and N Streets is a 90-foot high office building and across 23rd Street is the Boston properties site. North and east of the site is a mixture of row dwellings and apartments zoned R-5-B, followed by commercial zoning (C-2-A and C-2-C) north of O Street, N.W.
8. On December 11, 1989, at its regular monthly meeting, the Zoning Commission authorized a public hearing for Case No. 89-20C, as revised. The Commission determined that the CR rezoning proposal had no merit and, in lieu thereof, determined that it would consider R-5-D rezoning for the PUD site.
9. The R-5-B District permits matter-of-right development of general residential uses including single-family dwellings, flats, and apartments to a maximum floor area ratio (FAR) of 1.8 and a maximum height of sixty feet.
10. The R-5-D District permits matter-of-right general residential uses of high density development, including single-family dwellings, flats, and apartments to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.0 for apartment houses and 5.0 for other structures, and a maximum lot occupancy of seventy-five percent.
11. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-state PUD. The Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for height, FAR, lot occupancy, parking, and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 3

12. The District of Columbia Generalized Land Use Element Map of the Comprehensive Plan for the National Capital, as amended, identifies the PUD site as being in the moderate density residential land use, and bordering the mixed use high density residential and medium density commercial land use categories.
13. On February 22, 1990, the applicant filed its prehearing submission which included a second revised proposed. The revisions included 215 apartment units, 15,499 square feet of limited office/retail floor area, a building height of eighty-eight (88) feet, 217 underground parking spaces and an FAR of 7.43. The applicant requested the Zoning Commission to advertise in the notice of public hearing, alternative rezoning consideration for CR or C-2-C.
14. By letter dated March 2, 1990, the Zoning Secretariat informed the applicant that the Commission only authorized R-5-D rezoning consideration. Consequently, neither CR nor C-2-C was advertised for public hearing.
15. The applicant, through testimony presented at the public hearing, indicated that the District of Columbia and the neighborhood will realize significant benefits from the proposed PUD. The project provides a number of special amenities, including the following:
  - a. An apartment building of superior architectural design that will provide a much needed addition of 210 housing units to the housing stock at an appropriate and highly visible location. The residential units will include a broad variety of unit sizes including one bedroom, one bedroom plus den, two bedroom and two bedroom plus den units to address wide range of housing needs;
  - b. Accessory commercial uses to support the residents of the project and the neighborhood;
  - c. A striking project design that announces the entry into the West End and creates a also successfully transition from the higher density commercial structures north of N Street to the lower buildings along 22nd Street, to achieve a successful integration of the project into the surrounding area. The exemplary design will achieve a strong visual presence sensitive to the transitional nature of the site and its "gateway location". The design will include:
    - i. Significant stepdowns along both the 22nd and 23rd

Street sides of the building;

- ii. A child care amenity involving the location of a 2,300 square foot child care resource center in the new building. The high visibility, street level space will be offered rent-free for ten years. In addition, the applicant will provide annual grant of \$10,000.00 for ten years to the resource center. These grants will be used to fund programs that will specifically address neighborhood needs;
  - iii. Substantial improvements to and maintenance of the public space in Square 49 through an agreement with the National Park Service (NPS) and the elimination of the unsightly service parking on the site;
  - iv. The landscaping of Lot 36 to further enhance the adjacent NPS parcel;
  - v. A project that will facilitate and maximize the use of mass transit by bringing several new residents to the area;
  - vi. A project that will prevent any adverse impacts on existing traffic conditions through the provision of 160 on-site parking spaces and coordinated vehicular access and loading via a driveway off of N Street, and an egress for delivery vehicles onto 22nd Street;
  - vii. Minority Business Opportunity Commission agreement in which the applicant will seek to award 35% of construction-related contracts to minority businesses and a First Source Employment Agreement with the Department of Employment Services to promote the hiring of D.C. residents; and
  - viii. Increased tax revenues resulting from the creation of jobs for the new development with minimal additional cost.
16. The applicant's architect, by testimony presented at the public hearing, stated that the project will achieve a strong visual presence similar to some of Washington's grand apartment buildings and that the overall massing of the project is highly responsive to neighboring properties. Under the second revised plan, the western and eastern portions of the buildings step down from a maximum height of 88 to 61.25 feet in order to provide an appropriate transition between the

new project and the existing Georgetown Overlook building which is 55 feet in height. This type of stepping feature has been used successfully in projects in the West End and responds to the concerns expressed by the 22nd Street residents about the appropriate transitioning of the building.

17. The architect requested flexibility on the following areas to ensure that minor refinements and improvements made during the process of design development will be consistent with the intent of the proposed design:
  - a. Final material and color selection will be based on field mock-up panels, samples and material availability;
  - b. Minor refinements to exterior details and dimensions, which include materials, belt courses, sills, bases, cornices, railings and trim;
  - c. Minor refinements incorporating suggestions of the Office of Planning and the citizens groups as appropriate;
  - d. Minor refinements to final quantity and size of windows, emergency egress doors and ventilation grills in order to coordinate with the newly adopted D.C. Building Code;
  - e. Flexibility in the location of retail entry doors;
  - f. Final locations of all interior apartment, retail and service office partitioning and quantity and placement of stairs and elevators;
  - g. Flexibility to reduce or increase the number of apartment units by up to 10% in order to respond to prevailing market conditions at the time of construction; and
  - h. Final location of the swimming pool.
18. As the applicant's urban design consultant testified, the density, massing and architectural treatment of the proposed project are appropriate for the scale of the buildings in the surrounding area. He emphasized the site's uniqueness because of its location at both a city edge and a park edge. He noted that housing on the site is highly appropriate because it will increase the 24 hour occupancy of the neighborhood. He emphasized that the site's adjacency to Rock Creek Park almost mandates the high density residential use. The height and FAR proposed for the site are compatible with the area and consistent with the goal of maximizing housing on the site. He concluded that the height, bulk and specific architectural

treatment of the building are appropriate and that the project will make a strong contribution to the area.

19. In a report dated February, 1990, the applicant's expert traffic consultant stated that the site is bounded by two major one-way arterial streets; 22nd Street on the east with northbound traffic flow and operates at level of service A; and 23rd Street on the west, with southbound traffic flow and also operates at the level of service A. The subject site is located within walking distance of Metrorail and is served by several Metrobus routes. The number of cars that will be generated by the project will not change any of the current levels of service. The report concluded that the proposed number of spaces was adequate, that the proposed parking and loading are adequate, and that there will be no adverse impacts in terms of traffic. The design of the loading and parking entrances will ensure pedestrian safety.
20. The land planning expert testified that the proposed project is consistent with the Housing Element of the Comprehensive Plan and the District's goal to have adequate and affordable housing for all District residents, the goal of creating new and rehabilitated housing to meet all levels of demands and to provide incentives for the type of housing needed at desired locations, the goal of providing new housing to meet the present and future needs of District residents at locations consistent with District land use objectives, and encouraging multi-unit housing development near selected Metrorail stations.
21. He further testified that approval of the PUD and map amendment would be consistent with the Comprehensive Plan in terms of height, bulk and uses surrounding the site. The Land Use Map of the Comprehensive Plan is generalized in nature and must not be used as a zoning map. The application includes a substantial amenities package that is directly consistent with the purposes of zoning to protect and enhance the public health, safety and welfare.
22. In testimony at the hearing, the applicant's child care consultant and the Executive Director of the Washington Child Development Council (WCDC) described the type of facility that will operate in the proposed building. The proposed center will provide walk-in child care resource and referral services to neighborhood residents. It will also provide child care resource and referral services by telephone to all city residents. In addition, workshops for child care staff and parents will be held on the site. WCDC will encourage the development of programs to provide services to families at

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 7

risk including the homeless and teenage mothers. The proposal addresses a strong need in the neighborhood for a link between providers of child care and families who need child care and that the provision of a day care center on the site would not address the needs in the area.

23. The District of Columbia Office of Planning (OP), by memorandum dated April 13, 1990 and by testimony presented at the public hearing, recommended that the application be approved. OP indicated the following:

"The project is supportable for a number of reasons. The West End, which has been cheated out of residential use in the past because developers have opted for hotel alternatives, would be getting 215 residential units. Those units would not be subsidized by office development. Notwithstanding some potential height and bulk impacts, new (or substantially renovated) lower density housing is not typically a viable option in near downtown locations. The height of the project has been lowered, and the perceived height has been lowered still more. The design has been substantially improved. In addition, the amenities package, including space for child development program education/training appears to be adequate; particularly recognizing that the primary amenity would be the addition of 215 residential units in a near downtown location.

It is important to note the philosophical context for the proposed project and for the changes that it would introduce into its immediate neighborhood. The project would be built in the city, on the edge of the defacto Central Employment Area or downtown core. A city core is normally more urban and more dense than the outlying areas. If it is viable, it is a dynamic place, and change and stability must coexist. Because it is not built all at once and often partially rebuilt many time, it is not perfectly consistent in height and use -- but in cities, the resulting diversity is more often than not, an asset. Finally, it would be hard to argue against encouraging the highest density housing to locate nearest to the core, provided a reasonable accommodation is made in regard to pre-existing uses and structures. Thus, the Office of Planning supports the project's important contribution to housing in a near downtown location and recommends approval of this application".

24. The District of Columbia Fire Department (DCFD), by memorandum dated April 11, 1990, had no objection to the proposal,

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 8

provided the applicant complied with the D.C. Construction Codes, as amended.

25. The District of Columbia Department of Public Works, by memorandum dated April 12, 1990, indicated the following:

- a. That the PUD site is accessible to public transportation facilities;
- b. That traffic generated by the project will not adversely impact the transportation system and facilities;
- c. That the proposed 217 on-site parking spaces are adequate;
- d. That DPW had no objection to access to the loading and parking areas nor egress from the loading area;
- e. That DPW had no objection to the circular driveway on N Street, provided the applicant complied with DPW driveway design requirements;
- f. That existing water and sewer facilities for the PUD site are adequate; and
- g. That the applicant will be required to implement an adequate stormwater management plan.

26. The District of Columbia Department of Recreation (DOR), by memorandum dated March 16, 1990, reported the following:

"With respect to development of the small triangle area north of the site, we are pleased to learn that there have been preliminary discussions between the developer and the National Park Service on irrigating and landscaping that area. The landscaped courtyard, a water element, and child development center for 38 children should also measurably enhance the quality of the development."

27. The District of Columbia Department of Finance and Revenue (DFR), by memorandum dated April 11, 1990, supported the construction of new housing and believed the project would generate slightly less than \$300,000.00 of real property taxes annually.

28. The District of Columbia Metropolitan Police Department (MPD), by letter dated April 16, 1990, reported that the MPD was not opposed to the PUD.

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 9

29. Advisory Neighborhood Commission - 2B, by letter dated April 20, 1990 and by testimony presented at the public hearing, opposed the application for the following reasons:
- a. The building will totally change the character of the area, which is low and moderate density residential. The massive size of the building is an extension of the large structures of the West End Area south of N Street and contrasts markedly with the townhouses and small residential buildings which have existed on that site previously and which characterize the remaining portion of the block and the area east of 22nd Street. In particular, the ANC is concerned about the structure at 1312 N Street, which will be deprived of air and light;
  - b. Although characterized by the developer as a "transition" building, it is as high and imposing as the buildings south of N Street and does not serve as a gradual transition to a lower-density area. The transition should be in favor of the zoning of the block on which the property is located rather than the zoning south of P Street;
  - c. The building may bring a significant increase in traffic in an area which already suffers considerable congestion and traffic problems;
  - d. The "Residential" building will retain commercial elements that are not needed and are inconsistent with the strong desire of residents to prevent commercial encroachments into this residential area; and
  - e. The amenities offered are wholly inadequate to offset the considerable losses to residents of the area. Although residential housing is a recognized amenity, this is not the case of a developer taking an area in which there was no housing and bringing housing. The developer is essentially bringing a high density residential property to a moderate density area to the detriment of the area and in opposition to the current residents.
30. Eric R. Stanley, party in the proceedings, by letters dated March 14 and April 23, 1990 and by testimony presented at the public hearing, supported the application because it would help to reduce housing demands in the West End community, would provide neighborhood-serving retail/service uses, and had an attractive design.
31. The West Dupont Action Coalition (WEDAC), party in the

- proceeding, by Exhibit No. 93 of the record and by testimony presented at the public hearing, opposed the application because it conflicts with D.C. development plans and policies, will not enhance the neighborhood, and will not provide present nor future occupants with an environment and amenities superior to those obtainable from non-PUD zoning use.
32. The Dupont Circle Citizens Association (DCCA), party in the proceeding, by letter dated April 6, 1990 and by testimony presented at the public hearing, opposed the application because the project was too high and massive for the neighborhood, the applicant never sought neighborhood input from DCCA, the project amenities were inadequate, the project would create an adverse traffic impact, the proposed building material and color were not compatible with the neighborhood, and the PUD site failed to meet the minimum one-acre requirement for the R-5-B zone district.
33. Virgil Brown, party in the proceeding, by letter dated April 9, 1990 and by testimony presented at the public hearing, opposed the application because of the adverse environment affect due to construction dust, noise, vibrations and fumes, and the obstruction of natural light and ventilation, height, and traffic, loading and parking affects. He made the following request:
- a. That the Commission not change the zoning in Square 49 nor permit any portion of the square to be developed under a PUD;
  - b. That on 22nd Street and to the depth of his property, the applicant not be permitted to build above the height of his building or if they are permitted to do so, they will provide a thirty foot setback from the south wall of his building for the depth of his lot;
  - c. That the applicant not be permitted to build any structure above grade north of a line drawn by extending the southern boundary of his lot west to 23rd Street;
  - d. That no vehicular traffic enter into or exit from whatever structure is permitted on 22nd Street;
  - e. That the Commission require that within ten days of this hearing date, the applicant submit a list of real amenities for Square 49 (such as adopting his property tax increases for 30 years); and
  - f. Refuse to rule on this case until the matter of his

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 11

property at 1312 N Street is settled.

34. City Councilmember John A. Wilson (Ward 2), by letter dated April 23, 1990, requested the Commission to deny the application because the proposed height, bulk, and design are incompatible with the neighborhood, and are inconsistent with the soon-to-be effective Land-Use-Element amendment of the Comprehensive Plan.
35. Several letters were received and persons testified at the hearing in support of the application. Likewise, several letters were received and persons testified at the hearing in opposition to the application. The issues raised in support and opposition have been identified by others herein.
36. By Exhibit No. 104 of the record, the DCCA informed the Commission that it filed an application dated March 21, 1990 for landmark designation of 2225 N Street, N.W. before the Historic Preservation Review Board (HPRB). The subject building is a part of the PUD site, is located at the 23rd Street frontage of the PUD site, and occupies lot 4 in Square 49. DCCA indicated that after two unsuccessful attempts to expand the Dupont Circle Historic District, it was then making an attempt to insure protection of the most notable buildings in the proposed expanded district; in this case, the Wardman Apartment Building.
37. On May 16, 1990, the HPRB granted historic landmark status to the Wardman Apartment Building at 2225 N Street, N.W. On May 23, 1990, counsel for the applicant filed a motion for reconsideration before the HPRB of its decision.
38. On June 11, 1990, at its regular monthly meeting, the Zoning Commission considered Case No. 89-20C for proposed action. After discussion, the Commission deferred proposed action until the applicant and other parties negotiated further about the PUD site. The following applied:
  - a. The negotiations should focus on a building height reduction from 90 feet to 60-65 feet, excluding penthouse;
  - b. The applicant should submit the final decision of the Historic Preservation Review Board; that is, the disposition of the applicant's motion for reconsideration;
  - c. The Chairman ruled to reopen the record to permit the

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 12

applicant and other parties an opportunity to address the above, and for the applicant to submit revised architectural graphics that address the above-mentioned issues; and

- d. The Commission also reopened the record to receive the memorandum of the Corporation Counsel about the PUD process and D.C. Law 2-144.
39. By letter dated July 23, 1990, (Exhibit No. 136), the applicant filed a third revised proposal and requested the Commission to fragment the project into two phases. Consolidated PUD approval was requested for Phase I and first-stage PUD approval was requested for Phase II.
40. Phase I is for the construction of a mixed-use residential/non-residential building containing 146 apartment units with some ground floor non-residential uses on Lots 18-21, 24-27, 34, 42, 812 and 813 in Square 49. The maximum height is seventy-two feet including penthouse, the maximum FAR is 6.09 (5.51 FAR for residential use and .58 FAR for commercial use), a lot occupancy of 100% at the ground and 86% above, and underground parking to accommodate 136 cars.
41. Phase II is for the restoration and renovation of the Wardman Apartment Building for mixed residential/non-residential uses on Lot 4 in Square 49. The applicant proposes to construct a two-story addition to the Wardman Building. The revised proposal will have two additional stories, and approximately twenty-nine (29) apartment units with some ground floor commercial uses.
42. ANC-2B, by letter dated July 30, 1990, supported the third revised proposal, including the request to build in two phases, provided that:
  - a. The project be amended to provide for the rehabilitation of 2225 N Street with no significant alterations in its structure and the uses limited to those permitted of the building on the rest of the site; or  
  
ANC-2B be presented with and approve any change to 2225 N Street, which is consistent with its landmark status and the needs and wishes of the community; and
  - b. The applicant IBG and Citistates, Inc., or any of its agents or assignees take no action to:
    - i. Have the historic landmark status of the building

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 13

at 2225 N Street N Street rescinded;

- ii. Demolish the building at 2225 N Street; or
  - iii. Make any alterations to the building which are inconsistent with its landmark status;
  - c. The map amendment be at the lowest level which is consistent with a maximum height of forty-five (45) on 22nd Street and seventy-two (72) feet for the project; and
  - d. The concerns of Virgil Brown be addressed, consistent with the position of ANC-2B.
43. The DCCA, by letter dated July 29, 1990, opposed the third revised proposal for the following reasons:
- a. That R-5-D rezoning would permit hotel occupancies as a matter-of-right, and the intense development north of N Street would further erode the low and medium density residential character of the area;
  - b. That consideration of the application at this time is inappropriate because project details were still changing and the applicant had not prepared detached architectural drawings for the addition and alterations to the Wardman Building;
  - c. That the two-phase process for the Wardman Building and the one-phase process for the new building are inconsistent with the purpose of this PUD process. Permitting this phased construction would most likely mean that the Wardman Building would not be renovated; and
  - d. That the proposed amenities of maintaining a Federal park, better quality architectural design, preservation of the Wardman Building, and a cash contribution to the Harrison Institute are not appropriate considerations within the intent of the Zoning Regulations.
44. Virgil L. Brown, by letter dated July 30, 1990, indicated that his concerns had not been addressed. He opposed the third revised proposal, and requested the Commission impose the following conditions, if it feels disposed to approve the case:
- a. That the applicant provide a minimum twenty foot setback

from the south lot line of Mr. Brown's property; and

- b. That the applicant not be permitted to construct any structure north of the extension of the south property line of 1312 - 22nd Street, N.W. to 23rd Street.
45. By letter dated July 30, 1990 (Exhibit No. 141), the applicant filed the fourth revised proposal with related architectural drawings. The fourth revised proposal indicated that the maximum height of the PUD project is seventy-two (72) feet, (including the penthouse), that the ground floor lot occupancy changed from 100 percent to 91 percent, that the commercial uses proposed for the garden and ground levels of Phase I were replaced with medical office uses, that the commercial uses proposed for the ground level of Phase II were replaced with residential uses, and that the first floor of Phase II which was open to commercial uses below was replaced by residential uses.
46. By letter dated August 27, 1990 (Exhibit No. 143), the applicant filed the fifth revised proposal with related architectural drawings. The fifth revised proposal indicated that the medical office uses proposed in the fourth revised proposal was replaced on the garden and ground levels of Phase I with accessory uses, and showed a corner detailed design of the Phase building.
47. On September 13, 1990, at its regular monthly meeting, the Zoning Commission considered the case for proposed action. After discussion, the Commission deferred proposed action and, in lieu thereof, reopened the record to permit the applicant to submit information about the third revised proposal that addresses the following issues and concerns raised by the Commission:
- a. What are the specific amenities?;
  - b. What architectural design (conceptual or specific), including plans, elevations and sections, is proposed for the historic property on the PUD site?;
  - c. What is the relationship between the historic property and the remainder of the PUD site?;
  - d. What is the proposed total floor area ratio (FAR), excluding the penthouse? What is the total FAR that can be achieved under the existing zoning?
  - e. Address the Comprehensive Plan issues about increasing

the density and height for the PUD site in the context of interpreting the land use and housing elements;

- f. Address the issue about including, and the Commission's authority about approving, the proposed medical office in the R-5-B and R-5-D zone districts; and
  - g. Pursuant to Chapter 24 and 30 of the Zoning Regulations, address the procedure and the Commission's authority to consider the revised proposal as a consolidated PUD that is fragmented into two phases, versus considering the proposal as a first-stage PUD of a two-stage process.
48. By letter dated October 26, 1990 (Exhibit No. 147), the applicant filed the sixth revised proposal with related architectural drawings. The sixth revised proposal indicated that the proposed 6.09 FAR was reduced to 5.66 (residential @ 5.16 FAR and commercial @ .50 FAR), and that the on-site parking was reduced from 136 to 102 spaces. The proposal also indicated that the residential uses proposed for the ground, first and second floor of Phase II was revised to commercial uses, that the accessory uses proposed for the garden level of Phase I was revised to residential uses, and that the accessory uses proposed for the ground level of Phase I was revised to residential and commercial uses. Phase II showed a revised two-story residential-use addition was replaced with a one-story residential use addition plus a swimming pool above that level.
49. The sixth revised proposal also showed the elevations of and the relationship between the historic preservation component (Phase II) and the larger portion of the project (Phase I). The revision also showed in Phase II the construction of a one-story addition, the infill of a courtyard, and sun porches on the north side of the building.
50. The District of Columbia Department of Consumer and Regulatory Affairs (Historic Preservation Division), by letter dated October 29, 1990 informed the Zoning Commission that the Historic Preservation Review Board granted conceptual design approval on October 24, 1990 for that portion of the PUD site at 2225 N Street, N.W., (Square 49, Lot 4).
51. By letter dated October 31, 1991 (Exhibit No. 150), the applicant filed the seventh revised proposal with related architectural drawings. The seventh revised proposal indicated that the commercial uses proposed for the ground, first and second floors of Phase II were revised to clinic uses, and the commercial/residential uses proposal for the

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 16

ground floor of Phase I had been reconfigured in floor plan design.

52. Virgil Brown, by letter dated November 13, 1990 (Exhibit No. 152), reiterated his opposition to the PUD project because the proposed R-5-D zoning is contrary to the land-use-element of the Comprehensive Plan.
53. DCCA, by letter dated November 13, 1990 (Exhibit No. 153), remained in opposition because the Comprehensive Plan, as amended, provides for "moderate density residential" uses for the site and DCCA believes that the existing R-5-B zoning is compatible with moderate density residential uses.
54. WEDAC, by letter dated November 13, 1990 expressed its conditional support and identified the following concerns:
  - a. That the building height not exceed 72 feet including the penthouse;
  - b. That no parapet exceed the 72 foot height limit;
  - c. That no non-residential uses be located in the Phase II building;
  - d. That the previously proposed 136 on-site parking spaces not be reduced to 102;
  - e. That there be no enlargement of the top floor footprint, as per October 26, 1990 plans; and
  - f. That there are discrepancies between floor plans and elevations, particularly for the set backs at 22nd Street.

WEDAC supported the retention of R-5-B zoning and the submission and related architectural drawings of August 27, 1990.

55. ANC-2B, by letter dated November 16, 1990 (Exhibit No. 157), opposed the revised plans of October 26, 1990 (sixth revision) for the following reasons:
  - a. The ANC opposes any map change and change in zoning which is inconsistent with the intent to preserve R-5-B zoning.
  - b. The actual height of the building is now identified as 80 feet, which is above the 72 foot limit we identified as the maximum height of the building which we find

acceptable;

- c. The project now provides for non-residential use for the historic building at 2225 N Street which we consider as inconsistent with its character;
  - d. The building at 2225 N Street is significantly changed, primarily by filling in the courtyard, which change is inconsistent with the landmark status of the building;
  - e. The parking has been reduced significantly, thereby limiting the amenities of the project, which were minimal to begin with; and
  - f. The PUD should provide that the parking be primarily for the residents and be made available only on an hourly (rather than weekly or monthly) basis for spaces which are made available to the public.
56. On November 19, 1990, at its regular monthly meeting, the Zoning Commission proposed to approve the application, as revised, with conditions. The proposed guidelines, conditions and standards were reviewed and approved by the Commission on January 14, 1991.
57. By letter dated March 1, 1991 (Exhibit No. 160), the applicant requested a waiver of applicable rules of practice and procedure to consider a motion for reconsideration to make technical revisions to proposed Conditions No. 2, 4, and 11(a) before final action was taken.
58. WEDAC, by letter dated March 7, 1991 (Exhibit No. 161), had no objection to the applicant's motion for reconsideration dated March 1, 1991. WEDAC, however, strongly supported the retention of Conditions No. 5 and 6 of the proposed guideline, conditions and standards that were approved on January 14, 1991.
59. ANC-2B, by letter dated March 14, 1991 (Exhibit No. 164), had no objection to the applicant's motion for reconsideration dated March 1, 1991.
60. On April 8, 1991, at its regular monthly meeting, the Commission considered the applicant's letter of March 1, 1991, the responding comments from WEDAC dated March 7, 1991 and ANC-2B dated March 14, 1991, and a memorandum dated April 8, 1991 from the Secretary to the Zoning Commission (Exhibit No. 167) which identified information that he believed was needed in the record before final action was taken.

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 18

61. After discussion, the Commission granted the request of the applicant to make some technical revisions to Conditions No. 2, 4 and 11(a), as proposed. The Commission also reopened the record to permit the applicant to submit additional information in response to the following:
  - a. Final data and language to support first-stage approval of Phase II (Wardman Building); e.g., conditions of approval, and tabulation data, including dwelling count, and architectural drawings;
  - b. One full-size set of architectural drawings (plus 20 reduced-size copies) that accurately reflects the Commission's conditions of approval for Phase I, including dwelling unit count; and
  - c. Proposed guidelines, conditions and standards language that provides assurance that Phase II will be developed; e.g., prohibiting the issuance of a certificate of occupancy for Phase I until Phase II is developed; placing an expiration date on the certificate of occupancy for Phase I until Phase II is developed; requiring the applicant to conspicuously disclose on all leases and/or conveyance documents that there is an expiration on the certificate of occupancy for Phase I until Phase II is developed; or some alternative language that compels the applicant to develop Phase II, if Phase I is developed.
62. On May 13, 1991, in its regular monthly meeting the Commission considered letters dated April 15 and 23, 1991 (Exhibit No. 169 and 170) from counsel for the applicant, the response thereto from WEDAC dated May 3, 1991 (Exhibit No. 171), and a memorandum dated May 6, 1991 (Exhibit No. 172) from the Secretary to the Zoning Commission about the affect of the aforementioned submissions on the final action of the Commission.
63. At that same meeting and after discussion, the Zoning Commission concurred with the recommendations of the Secretary to the Commission, as contained in Exhibit No. 172. The Commission determined that the recommended changes to the previously approved guidelines, conditions, and standards were not substantive and, therefore, were not required nor necessary to be referred to the National Capital Planning Commission for Federal impact review.
64. The Commission concurs with the recommendations and/or position of OP, DCFD, DPW, DOR, DFR, MPD, the applicant, Eric

R. Stanley, and others, and believes that the application, as revised, should be approved.

65. As to the concern of ANC-2B and others about the height of the project, the Commission finds that the resulting 74 foot height limit (that is, 72 feet including the penthouse plus a two-foot parapet), is consistent with the height limit of 65 feet, excluding penthouse, for the existing R-5-B District.
66. As to the concern of ANC-2B and others about adverse traffic impact, the Commission finds that the reduced size of the project from 208 to approximately 155 apartment units would proportionately reduce traffic. The Commission notes that, depending on the resulting zone district, the required on-site parking for 155 apartment units is approximately 40-78. The applicant will be required to provide 136 parking spaces.
67. As to the concern of ANC-2B and other about the encroachment of commercial uses in the residential zoned neighborhood, the Commission finds that it can only consider the establishment of permitted uses, either matter-of-right or special exceptions, in the PUD process. Therefore commercial uses, as proposed, by the applicant can not be established in the subject PUD.
68. As to the concern of ANC-2B and others about the adequacy of the amenities package, the Commission finds that the proffered amenities package, as contained in Exhibit No. 147 of the record, in addition to the restoration of the Wardman Building are adequate.
69. As to the concern of ANC-2B and others about compliance with the moderate density residential land use category of the Comprehensive Plan, the Commission finds that, notwithstanding Findings of Fact No. 12 of this order, the land-use of the proposed PUD, as revised, reasonably conforms to the moderate density residential category when placed in the context of the existing land-use categories and densities of the immediate area. The Commission also finds that, in the context of an urban design principle, the proposed height serves as a transition between the higher mixed-use commercial development to the south and west from the lower residential development to the north and east of the PUD site. The Commission further finds that the proposal is consistent with the housing goals of the Comprehensive Plan, especially with Sections 101, 301 and 303 which state the following, respectively:
  - a. Stabilize the District's neighborhoods, increase housing opportunities;

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 20

- b. Housing must be reviewed as part of an urban living system including public transportation, suitable employment, access to shopping and schools; and
  - c. Produce new housing at all levels at desired locations.
70. As to the concern of ANC-2B and others about the PUD project adversely impacting the light, air, and view of Virgil Brown at 1312 - 22nd Street, N.W., the Commission finds that said property would also be adversely affected if the subject site was developed to its maximum potential under the existing R-5-B zoning. Considering the configuration of the PUD site and its wrap-around relationship to 1312 - 22nd Street, N.W., the Commission believes that the relocation of the garage entrance from 22nd Street to N Street; the prohibition of the proposed commercial uses; the reduction of the proposed height and density, and the construction of an open-space terrace contiguous to and at the southwest corner of said property have minimized several potential adversities the proposal could have had on 1312 - 22nd Street, N.W. and the neighborhood.
71. As to the concern of ANC-2B and others about the mass of the project and its adverse affect on the character of the neighborhood, the Commission finds that the reduced scale and size of the project, in addition to the "stepping-down" design treatment at the east end, contributes to a project that is for more compatible with the neighborhood than originally proposed.
72. As to the concern about the preservation of the Wardman Building, the Commission finds that it has adequately addressed this matter in its decision.
73. As to the concern about fragmenting the subject consolidated PUD process into a consolidated PUD review of the Phase I component and a first-stage PUD review of the Phase II component, the Commission finds that although this approach is not typical, it is not unusual. The Commission believes that it can impose condition that will assure the completion of the Phase II component.
74. As to the concern about non-residential uses in the Wardman Building, the Commission believes that it has addressed this matter in its decision.
75. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission, pursuant to the terms of the

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 21

District of Columbia Self Government and Governmental Re-Organization Act. NCPC, by report dated February 7, 1991 indicated that the proposed action of the Zoning Commission to approve the PUD modification with conditions would not adversely affect the Federal Establishment or other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

76. The Commission finds that the applicant has satisfied the intent and purpose of Chapter 24 of 11 DCMR.

#### CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling the development of the subject site, because control of the use of the site is essential to assure compatibility with the neighborhood and achieve the goals and policies of the city.
2. The development of the PUD carries out the purposes of 11 DCMR 2400 and the Zoning Act to encourage the development of well-planned residential, institutional, commercial and mixed-use developments, which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
3. The development of this PUD is compatible with city-wide goals, plans and programs and is sensitive to environmental protection and energy conservation.
4. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital, as amended.
5. The application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community, but will enhance the neighborhood and assure neighborhood stability.
6. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the text and map of the Zoning Regulations.
7. The Zoning Commission has accorded ANC-2B the "great weight" to which it is entitled.
8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 22

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a Planned Unit Development for Lots 18-21, 24-27, 36, 42, 812 and 813 in Square 49 located on the north side of N Street between 22nd and 23rd Streets, N.W.

The Commission further grants first-stage PUD approval for Lot 4 in Square 49 located at 1325 - 22nd Street, N.W.

This PUD approval is subject to the following guidelines, conditions, and standards:

1. The Planned Unit Development site shall be developed in accordance with the architectural drawings prepared by Dewberry & Davis/Habib Architects, and marked as Exhibit No. 169-B of the record as modified by the guidelines, conditions and standards of this order.
2. The PUD project shall be developed in two phases. Phase I shall be developed with residential uses, and may be developed with non-residential uses as provided in Condition No. 4. Phase II shall be developed with residential uses to be located in the landmark Wardman Building. There shall be no commercial uses on the PUD site.
3. The applicant shall retain the Wardman Building and restore it in accordance with this PUD approval and the Historic Preservation Review Board.
4. The PUD project shall have a maximum floor area ratio (FAR) of 5.66, of which not less than 5.16 FAR shall be devoted to residential uses and not more than .50 FAR shall be devoted to non-residential uses.
5. The PUD project shall not exceed a height of 72 feet, including penthouse and/or elevator override shaft.
6. The height of the penthouse parapet wall shall not be more than two (2) feet above the penthouse roof nor be more than 74 feet in height.
7. The PUD project shall provide a minimum of 155 dwelling units including, but not limited to, 124 units in Phase I and 31

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 23

units in Phase II.

8. There shall be a minimum of 136 on-site parking spaces provided in the PUD project.
9. The lot occupancy shall not exceed 91% at the ground floor nor 86% for the typical residential floor.
10. The footprint of the top floor and the setback at the east end of the project (22nd Street side) shall be in accordance with the April 15, 1991 architectural drawings, marked as Exhibit No. 169-B.
11. The applicant shall provide the following amenities:
  - a. Completely restore 2225 N Street, N.W., in accordance with the D.C. Historic Preservation Review Board;
  - b. Provide streetscape improvements including the planting of mature trees along N Street;
  - c. Improvement and maintenance of the public space and Lot 36 immediately north of the subject site in accordance with Exhibit No. 138-B (tab m), and in agreement with the National Park Service;
  - d. The applicant shall implement an agreement with the District of Columbia Department of Employment services to participate in the District's First Source Employment Program to provide minority contractors and subcontractors jobs in conjunction with the construction of the PUD project; and
  - e. The applicant shall implement a memorandum of understanding with the Minority Business Opportunity Commission which provides for the applicant to make a bona fide effort toward providing at least thirty-five (35) percent of the construction related contracts for the project to certified minority business enterprises.
12. Pursuant to Condition No. 13 of this order, the facade design, treatment and materials for the proposed building shall be generally consistent with the plans marked as part of Exhibit No. 169-B in the record of this case, and consistent with the areas of flexibility granted by the Commission and noted in Condition No. 14 of this order. The building materials shall be as follows:
  - a. Predominantly masonry materials as indicated in material

sample submitted at the hearing. The final color of the facade material will be subject to change based on further examination of the color in field mock-up panels;

- b. Window mullions (factory painted aluminum); and
  - c. Retail window mullions (factory painted aluminum).
13. No building permit shall be issued until the applicant has submitted exterior building samples and other items contained in Conditions No. 12 and 14 that affect the exterior of the building, for final approval by the Zoning Commission, which may determine to grant without having a further public hearing.
14. The applicant is granted flexibility in the final detailing of the building with respect to the following matters;
- a. Final material and color selection will be based on field mock-up panels, samples and materials availability;
  - b. Minor refinements to exterior details and dimensions which include materials, belt courses, sills, bases, cornices, railings and trim;
  - c. Minor refinements to final quantity and size of windows, emergency egress stores and ventilation grills in order to coordinate with the newly adopted D.C. Building Code; and
  - d. Final location and design of all interior components, including partitions, structural, slabs, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building including the penthouse.
15. The amendment to the Zoning Map from R-5-B to R-5-D for the entire PUD site (Phases I and II) shall be effective upon recordation of a PUD covenant, as required by 11 DCMR 2407.
16. The consolidated PUD approval for Phase I by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within that time, an application must be filed for a building permit for Phase I, as specified in 11 DCMR 2407.2 and 2407.3. Construction on Phase I shall start within three years of the effective date of this order.

ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 25

17. The first-stage PUD approval for Phase II by the Zoning Commission shall be valid for a period of one year from the effective date of this order. Within such time, the applicant shall file the second-stage application, if this first-stage approval is to remain in effect.
18. No certificate of occupancy shall be issued for Phase I until the applicant has obtained a building permit for construction of Phase II. Further, that the applicant shall obtain a certificate of occupancy for Phase II within three years of the issuance of the certificate of occupancy for Phase I.
19. The applicant shall inform the Zoning Commission, by letter with copies to the parties in the case, of the date that the certificate of occupancy of Phase I is issued.
20. If the provisions of Conditions No. 18 and 19 are not met, the certificate of occupancy for Phase I shall be immediately revoked.
21. No building permit shall be issued for the project until the applicant has recorded a PUD covenant for the entire site (Phases I and II) in the land records of the District of Columbia, between the owner and the District of Columbia, satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use this PUD site in accordance with this order or any amendments thereof.
22. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicant has filed a certified copy of said covenant in the records of the Zoning Commission.
23. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the regular monthly meeting on November 19, 1990: 5-0 (Maybelle Taylor Bennett, John G.


ZONING COMMISSION ORDER NO. 690  
CASE NO. 89-20C  
MAY 13, 1991  
PAGE NO. 26

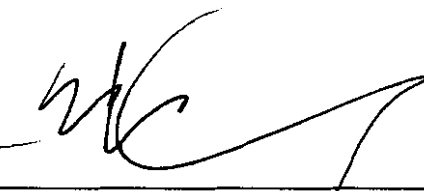
Parsons, William L. Ensign and Tersh Boasberg, to approve with conditions and R-5-D - Lloyd D. Smith, to approve by absentee vote).

The guidelines, conditions, and standards were approved by the Commission on January 14, 1991 by a vote of 4-1 (Lloyd D. Smith, Maybelle Taylor Bennett, William L. Ensign and John G. Parsons, to approve - Tersh Boasberg, opposed).

This order was adopted by the Zoning Commission at its regular monthly meeting on May 13, 1991 by a vote of 4-1 (William L. Ensign and Maybelle Taylor Bennett, to adopt as amended, and Lloyd D. Smith and John G. Parsons, to adopt by absentee vote - Tersh Boasberg, opposed).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is, on MAY 31 1991.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

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